

Supreme Court, U. S.  
**FILED**

FEB 14 1978

MICHAEL RODAK, JR., CLERK

in the  
**Supreme Court**  
of the  
**United States**

NO. 77 - 1145

LOUIS VERNELL, JR.,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

Appendix to  
**Petition for Writ of Certiorari to the United  
States Court of Appeals for the Fifth Circuit**

LOUIS VERNELL

*In Pro Se*

Executive Building

Miami Springs Villas

500 Deer Run

Miami Springs, Florida 33166

(305) 871-6565

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## Appendix A

Louis VERNELL, Jr.,  
Petitioner-Appellant.

v.

UNITED STATES of America,  
Respondent-Appellee.

No. 76-3929  
Summary Calendar.\*

United States Court of Appeals,  
Fifth Circuit.

Sept. 21, 1977.

Federal prisoner petitioned for postconviction relief. The United States District Court for the Southern District of Florida at Miami, Charles B. Fulton, J., denied motion for rehearing and vacation of order dismissing petition and petitioner appealed. The Court of Appeals held that relief was properly denied where the grounds raised in the petition had been previously decided by the district court and the Court of Appeals in petition for rehearing, motion for new trial, and direct appeal therefrom.

Affirmed.

Criminal Law — 997.7

\*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al., 5 Cir. 1970, 431 F.2d 409, Part I.

Postconviction relief was properly denied where grounds raised in prisoner's petition had been previously decided by both the district court and the Court of Appeals in petition for rehearing, motion for new trial, and direct appeal therefrom. 28 U.S.C.A. §2255.

Appeal from the United States District Court for the Southern District of Florida.

Before THORNBERRY, RONEY and HILL, Circuit Judges.

PER CURIAM:

Louis Vernell appeals from the denial on September 7, 1976, of his Motion for Rehearing and Vacation of an Order dismissing his §2255 petition. The Motion for Rehearing and Vacation of an Order requests reconsideration of issues which have been raised and reviewed in earlier motions and appeals. Vernell still asks that his conviction be overturned because of the same "newly discovered evidence" which was before this court at the time of his first direct appeal and because of the same perjured testimony and alleged wiretap which was before this court on the appeal from the denial of the motion for a new trial. The grounds raised in the instant §2255 petition have been previously decided by both the district court and this court in petition for rehearing, motion for new trial, and the direct appeal therefrom. Accordingly, we AFFIRM. See, e.g., Blackwell v. United States, 429 F.2d 514 (5 Cir. 1970); Del Genio v. United States, 352 F.2d 304 (5 Cir. 1965).

Appendix B

TESTIMONY OF PETITIONER,  
TRIAL TRANSCRIPT, Page 148

Q Now, you heard the testimony of Mr. McDaniel?

A Yes, sir.

Q Have you examined Government Exhibit No. 1 — No. 8?

A Relative to my extension applications?

Q Yes, sir.

A Yes.

Q They don't show that you filed extensions for all those years, do they?

A They are incorrect.

Q You believe they are incorrect?

A I know they are incorrect.

# TRANSCRIPT OF ACCOUNT DATE 06-11-73

VERNELL 4 AVE/FL 39139  
EIN SSN 147-20-5651\*  
PERIOD ENDING 71-12  
TYPE OF TAX INCOME  
FORM FILED NONE  
NAME CONTROL VERB  
SPOUSE RRB NO  
FREEZE STATUS CODE -2L  
PRIOR NAME CONTROL  
TRANSCRIPT TYPE 07299-146-30218-3 COMPLETE  
SORT DLN 59229-104-00090-3  
LOCATION CODES CURRENT 07-59-09  
TDA (IF DIFFERENT)

EXPLANATION	TRANSACTION DATE	23C DATE OR MEMO ENTRIES	AMOUNT	CYCLE	TRANSACTION DOCUMENT LOCATOR NUMBER	COND. CODE	ADJ CONTROL NO	REMARKS
EXT FILING-440	04-21-72		.00	7219	50217-114-01011-2			EATN DATE 06-15-72
SUMS PAYMT-670	04-21-72		.00	7219	59217-114-01011-2			CNTL NO 13108-00222
SCRIP IND-420	04-18-73		.00	7317	59229-104-00090-3	X		
EXT FILING-04	05-22-72		.00					
MODULE BAL			.00					
ACCRD INT	06-11-73		.00					
ACCRD PEN	06-11-73		.00					

App. 4

BEST COPY AVAILABLE

## Appendix C

I certify that the foregoing transcript of the account of the taxpayer named above as respect to the taxes specified, is a true and complete transcript of the prior stated, and all assessments, credits and refunds reflecting thereon as it appears in the records of the office as of the date of this certification are shown therein. It also certifies that all of the amounts or credits, payments, if any, made by the taxpayer to the Service have been properly accounted for.

*Michael D. Bentley*  
Special Agent in Charge  
Internal Revenue Service Center  
Southwest Region, Dallas, Texas

Date JUN 26 1973

## Appendix D

### IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

VS

LOUIS VERNELL, JR.

Defendant-Appellant

STATE OF FLORIDA;

: SS

COUNTY OF DADE :

### AFFIDAVIT

Louis Vernell, Jr., being first duly sworn, deposes and states as follows:

I

That he is the Defendant-Appellant in the above entitled cause and that he is personally familiar with all matters reflected herein.

II

That following the filing of Affiant's original appeal and pursuant to his request, the complete record in the lower court, including all exhibits, was remitted to Affiant by the Clerk of the above entitled Court as an incident to the filing of Affiant's Brief of Appellant.

App. 5



### III

That upon completion of such brief and at the request of the office of the U.S. Attorney, such record and all exhibits were thereafter physically delivered by Affiant to the office of the U.S. Attorney for its utilization in filing of the brief of Appellee.

### IV

That despite Affiant's simultaneous request that such record and exhibits be returned to Affiant upon the completion of Appellee's brief so as to enable the filing of a Reply Brief by Appellant, the U.S. Attorney's office inadvertently or otherwise returned the same directly to the office of the Clerk of the above entitled Court, rather than to Affiant.

### V

That, in deeming it necessary that the Exhibit File be further utilized in the preparation and filing of a Reply Brief of Appellant, Affiant again requested the Clerk of the above entitled Court (per letter attached) to remit such exhibits to him following their respective use and transmittal by the U.S. Attorney.

### VI

That, in compliance with the request, the Clerk of the above entitled Court did again remit the Exhibit File to Affiant, whereupon Affiant discovered and ascertained for the first time, the existence of Exhibit "A" annexed to Affiant's Motion for New Trial which reflected both the filing and granting of Affiant's application

for Extension of Time to file his tax return for the year 1971; such exhibit being found among and annexed to, one of the other Government exhibits which had actually been received and admitted into evidence during trial of the cause.

### VII

That Affiant affirmatively states that such Exhibit "A" was never previously contained with in the original Exhibit File as furnished Affiant by the Clerk of the above entitled Court, nor was the same present at the time of Affiant's delivery of such file to the office of the U.S. Attorney, nor further, was such Exhibit "A" at any time made a part of the record at and during trial proceedings.

### VIII

That accordingly, and until the second aforementioned delivery of transmittal of the Exhibit File to Affiant by the Clerk of the above entitled Court, the instrument designated as Exhibit "A" was never prior thereto, in the possession of your Affiant nor did he ever previously see or observe the same, nor indeed, did Affiant have any prior knowledge as to its existence.

FURTHER AFFIANT SAITH NAUGHT.

---

LOUIS VERNELL, JR.

Subscribed and sworn to before me  
this \_\_\_\_ day of August, 1975.

Offices of  
Louis Vernell  
Attorney and Counselor at Law

December 31, 1974

Clerk of the Circuit Court of Appeals  
600 Camp St.  
New Orleans, La. 70130

Att: George G. Bauer, Jr.

Re: USA vs. Vernell  
Case No. 74-3351

Dear Mr. Bauer,

Inadvertently Government counsel returned to your offices the record including exhibits which you had sent me at my request.

As you were doubtless informed, I provided the record to Government counsel upon completion of my brief so as to assist in the preparation for the Government's brief.

In attempting to reply to the Government's brief, I find it necessary that I again impose upon you for the return of the exhibits and request a short extension of time to file an appropriate reply brief.

Government counsel indicated that because of the inadvertent remittance of the record, rather than returning same to this office, it had no objection to extending the time for the reply brief.

Thanking you for your indulgence and extending to you and your office my best wishes for the new year, I remain,

Cordially,

LOUIS VERNELL

LV:bs

**Appendix E**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. 74-3351  
Summary Calendar\*

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

versus

LOUIS VERNELL, JR.,  
Defendant-Appellant.

Appeal from the United States District Court for the  
Southern District of Florida

(February 25, 1975)

Before BROWN, Chief Judge, GODBOLD and GEE,  
Circuit Judge.

PER CURIAM: IT IS ORDERED that appellant's  
motion for leave to supplement the appendix is  
GRANTED.

AFFIRMED. See Local Rule 21.<sup>1</sup>

\*Rule 18, 5 Cir., Isbell Enterprises, Inc. v. Citizens Casualty  
Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

<sup>1</sup>See N.L.R.B. v. Amalgamated Clothing Workers of America,  
5 Cir., 1970, 430 F.2d 966.

**Appendix F**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

NO. 74-3351

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

vs.

LOUIS VERNELL, JR.,  
Defendant-Appellant.

Appeal from the United States District Court for the  
Southern District of Florida

(June 24, 1975)

ON PETITION FOR REHEARING AND PETITION  
FOR REHEARING EN BANC Before BROWN, Chief  
Judge, GODBOLD and GEE, Circuit Judges. PER  
CURIAM:

This appeal, in which the appellant is a practicing  
attorney, is from a conviction for willful failure to file  
federal income tax returns. We affirmed the conviction  
by a Rule 21 decision, and appellant has filed a petition  
for rehearing and for rehearing en banc.



As one of the grounds for the petition for rehearing en banc appellant, without making unequivocal allegations, suggests the possibility that extraneous and prejudicial influence may have tainted or remotely affected this court in the consideration of his appeal. He refers to statements possibly made to Chief Judge Brown of this court, by telephone, by William L. Taub, a client or former client of appellant, with whom appellant states he had come to have sharp and antagonistic differences. According to appellant, statements by Taub, if made at all, may have alluded to purported improper actions by appellant in matters unrelated to the conviction on appeal.

Chief Judge Brown has filed with the clerk of this court a written statement, a copy of which has been sent to appellant, stating that he had two telephone conversations with Taub relating to a request by Taub for a stay order in a civil case pending in the United States District Court for the Southern District of Florida; that at the time of the conversations Chief Judge Brown did not know that the appellant then was or had been Taub's attorney in the case pending in the Southern District of Florida; and that in the conversations Taub said nothing about appellant, adverse or otherwise.

Our Rule 21 opinion affirming appellant's conviction was issued February 25, 1975. On April 11, 1975 appellant filed his petition for rehearing, having been granted additional time based upon his representation that he did not receive a copy of the opinion. We have independently examined the file of this court in the matter of Taub's request for a stay order, Twentieth Century Fox Film Corp. vs. Saudco, Ltd. and Taub, No. 75-1531. A stay order was denied by this panel on March

10, 1975. While appellant does not refer to it in his petition, we note that on March 19, 1975, before appellant filed his petition for rehearing in the instant case, Taub by a telegram to the Clerk of this court, requested reconsideration of the denial of the stay order in No. 75-1531. In the telegram Taub stated: "Louis Vernell failed to advise me of this order [the order denying a stay] and continues totally neglectful of our legal interest in this matter."

A copy of the telegraphic petition was sent to each member of this panel, and the panel denied the petition. Thus in acting at this time on the instant petition the panel takes cognizance of Taub's telegraphic statement concerning appellant. We attach no weight or significance to this dispute between appellant and Taub. The content of Taub's statement is wholly irrelevant to appellant's conviction for failure to file federal tax returns. The fact that we have been informed that such a dispute exists does not disqualify any member of this panel from reviewing and acting upon appellant's petition (or his motion to remand described below).

The petition for rehearing is DENIED. No member of this panel or judge in regular active service having requested that the court be polled on rehearing en banc, the petition for rehearing en banc is DENIED.

Appellant also has filed a motion that the case be remanded for evidentiary hearing. The various grounds asserted are raised for the first time on appeal, on petition for rehearing, or in the motion itself, and we will not consider them. The motion is DENIED.

**Appendix G**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 74-79-CR-CF**

**UNITED STATES OF AMERICA**  
Plaintiff

vs

**LOUIS VERNELL, JR.**  
Defendant

**MOTION FOR NEW TRIAL**

Louis Vernell, Jr., Defendant, appearing pro se, respectfully moves this Honorable Court, pursuant to Rule 33 of the Federal rules of Criminal Procedure, to grant a new trial in the within cause and to accordingly vacate and set aside the conviction and sentence as entered herein, showing as grounds and reasons therefor, as follows:

1. That Defendant was heretofore convicted after trial by jury, of the misdemeanor offense(s) of failure to file income tax returns as proscribed by Section 7203, Internal Revenue Code, Title 26, Code 7203.

2. That subsequent to the entry of judgment and during the process of appeal taken, the Defendant did ascertain and otherwise discover that Defendant's trial was marked with constitutional infirmities and unfairness to such an extent as to have effectively deprived

the Defendant from receiving a fair and impartial trial; that, with due and utmost respect for this Honorable Court, the Defendant submits that such matters were of such a nature as to have been unknown and undisclosed to both the Court and to the Defendant at and during trial proceedings.

3. That accordingly and as a result of newly discovered evidence, the Defendant submits that in contravention of his constitutional rights, the Government failed to disclose and otherwise suppressed evidence of an exculpatory nature; that, further, the Government offered into evidence in the cause, false and erroneous testimony and records; that as reflected infra, such actions and conduct, on the part of the Government, not only destroyed Defendant's credibility before the jury, but otherwise materially affected the outcome of the cause; viz:

(a) At trial, all elements of the subject offense(s) were duly stipulated and agreed to, save and except for the issue of wilfulness, which constituted the sole triable issue in the cause; that as an integral part thereof, the Defendant sought to demonstrate that during each of the subject years for which he was charged, he had made timely application for extension of time to file the required tax returns and that the same, on occasion, had been granted to him; that with the exception of such factual matter(s), the Government either conceded or otherwise failed to refute virtually all other facts and circumstances alluded to by the Defendant in his trial testimony.

(b) That as reflected in the record, the focal point of Defendant's trial and the very crux of the factual dis-

pute, circumscribed Defendant's claim that he had filed an application for extension for the year 1971. In denying Defendant's claim, Walter McDaniel testified on behalf of the Government "as the personal representative of the District Director" that not only had the Defendant not made an application for such, but specifically, none had been granted to him. In addition, the Government presented into evidence records which it represented reflected "all of the transactions of the taxpayer"; such records indicating that Defendant had neither filed nor been granted an extension for such year.

4. That Defendant would now show that both the testimony of such witnesses, as well as the records presented into evidence, were false and erroneous as reflected in the annexed Exhibit "A", which was discovered long after trial of the cause; that in truth and in fact, the Government had the subject documents and information in its possession long prior to trial of the cause and wholly failed to disclose or make the same available to Defendant.

5. That notwithstanding, and as reflected in the record, the Government utilized such false and erroneous testimony and records not only as direct evidence in the cause, but further employed the same in a concerted effort to impeach the testimony of the Defendant. Indeed, the Government actually pitted the very credibility of the Defendant against such incompetent evidentiary matter, viz:

"Vernell — Cross

Q Now, you heard the testimony of Mr. McDaniel?

A Yes, sir.

Q Have you examined Government Exhibit No. 1 — No. 8?

A Relative to my extension applications?

Q Yes, sir.

A Yes.

Q They don't show that you filed extensions for all those years, do they?

A They are incorrect.

Q You believe they are incorrect?

A I know they are incorrect." (TR 148)

6. That Defendant further submits that the Government further knew prior to the commencement of the trial, that the Defendant did not have copies or other evidence reflecting his application for extension for the year 1971; that such information was imparted to the Government on the day prior to trial as a result of telephone conversations between the Defendant and his accountant and attorney, which Defendant submits, upon reliable information, were illegally monitored.

7. That such actions and conduct by the Government in suppressing evidence of an exculpatory nature



and in proffering false and erroneous testimony and records into evidence, served to deny to the Defendant his constitutional right to a fair and impartial trial and otherwise served to preclude the rendition of a fair and impartial verdict.

8. That such newly discovered evidence further serves to reflect the presence of a material variance between the information and proof adduced as to matters of substance; such variance being of sufficient nature as to vitiate the judgment of conviction entered.

9. That Defendant submits that by reason of the foregoing a new trial is required in the interest of justice in the cause.

WHEREFORE, Defendant respectfully moves this Honorable Court to conduct an evidentiary hearing upon the matters included herein and to thereupon vacate and set aside the judgment and sentence as entered in the within cause. Defendant further prays that this Honorable Court will dismiss the within cause or, alternatively, grant him a new trial.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was hand-delivered this 7th day of August, 1975, to Robert W. Rust, Esq. 300 Ainsley Building, Miami, Florida.

\_\_\_\_\_  
LOUIS VERNELL, JR.  
100 S. E. Second Street  
Miami, Florida 33131

#### Appendix H

#### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

NO. -74-79-Cr-CF

[FILED AUG 8 1975]

UNITED STATES OF AMERICA,

vs.

LOUIS VERNELL, JR.,

Defendant.

#### ORDER

This cause came before the Court upon the defendant's motions to set bail, for new trial, and for mitigation and reduction of sentence. The Court has carefully considered the motions and it is thereupon

ORDERED AND ADJUDGED that defendant's motions to set bail, for new trial, and for mitigation and reduction of sentence are denied.

DONE and ORDERED at West Palm Beach, Florida, this 8 day of August, 1975.

\_\_\_\_\_  
/s/ Charles B. Fulton  
Chief Judge

cc: U.S. Attorney  
Louis Vernell, Jr., Esq.  
Probation  
U.S. Marshal

**Appendix I**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

NO. 75-3128  
Summary Calendar\*

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

versus

LOUIS VERNELL, JR.,  
Defendant-Appellant.

Appeal from the United States District Court for the  
Southern District of Florida

(January 21, 1976)

BEFORE BROWN, Chief Judge, GODBOLD and GEE,  
Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.<sup>1</sup>

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\*Rule 18, 5 Cir.; See Isbell Enterprises, Inc. v. Citizens  
Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409. Part I.

<sup>1</sup>See N.L.R.B. v. Amalgamated Clothing Workers of America,  
5 Cir., 1970, 430 F.2d 966.



**Appendix J**

**MOTION PURSUANT TO 28 U.S.C. 2255  
ATTACKING SENTENCE IMPOSED BY COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

[FILED Illegible]

CASE NO. 76-439-Civ CF

IN RE: 74-79-CR-CF

LOUIS VERNELL,

Petitioner

VS

UNITED STATES OF AMERICA,

Respondent.

**INSTRUCTIONS**

(Read carefully — must be filed in triplicate)

For this motion to receive consideration by the District Court, all copies must be legibly handwritten or typewritten, signed by the Petitioner, notarized, and set forth in concise form the answer to each applicable question. If necessary, Petitioner may finish his answer to a particular question on the reverse side of the same page, or on an additional blank page, clearly indicating to which question such continued answer refers.

Since every motion under this Section must be sworn to under oath, any false statement of a material fact herein may serve as the basis of prosecution and conviction for perjury. Extreme care should, therefore, be exercised to assure that all answers are absolutely true and correct.

Upon completion, the original and both copies must be returned to the: Clerk, United States District Court, Southern District of Florida, P.O. Box 669, Miami, Florida, 33101, together with the \$15.00 filing fee for commencing this proceeding or, if applicable, an affidavit in forma pauperis sworn to under oath.

1. Place of present detention .....Eglin Air Force Base, Federal Prison Camp
2. Name and location of court, and Judge who imposed sentence .....  
U.S. District Court, Southern District, Miami Division  
Hon. Charles Fulton
3. With reference to your conviction, list the following:
  - (a) Case No. ....74-79-CR-CF
  - (b) Offense . Failure to timely file tax returns
  - (c) Title & Section of U.S. Code 26 USC 7203
  - (d) Sentence imposed 9 months-mitigated to 5 months

(e) Date sentence imposed ..... July 18, 1974

4. Check the nature of your plea prior to a finding of guilty:

Guilty .. ; Not Guilty X ; Nolo  
Contendere ...

5. If your plea was not guilty, check if you were found guilty by:

a Jury X a Judge without a Jury .

6. Did you appeal the judgment of conviction?  
Answer: Yes

7. If you answered "yes" to Question Number 6 above, list:

- (a) Appellate Court ... Fifth Circuit Court of Appeals

Date of Appeal ..... July 19, 1974

Result ..... Affirmed-per Rule 21

Date of result ..... July 7, 1975

Citations of written opinions or  
orders entered pursuant thereto None-510  
Fed 383

- (b) Appellate Court .. Supreme Court of the United States

Date of Appeal ..... August 30, 1975

Result ..... Certiorari denied

Date of result ..... December 8, 1975

Citations of written opinions or orders  
entered pursuant thereto .. None 18 CRL  
4098

8. Were you represented by an attorney during the course of your:

- (a) Arraignment and plea? ..... Yes

Name of attorney ..... E. David Rosen

Address of attorney .. Biscayne Building,  
Miami, Fla.

Was attorney Court appointed? ..... No

- (c) Sentencing? ..... Yes

Name of Attorney ..... same

Address of attorney ..... same

Was attorney Court appointed? ..... No

- (d) Appeal (if applicable)? ..... No — Pro Se

Name of attorney .....

Address of attorney .....

Was attorney Court appointed? .....

- (e) Preparation, presentation or consideration of any other post-sentence, petitions, with respect to this conviction? No — Pro Se

Name of attorney .....

Address of attorney .....

Was attorney Court appointed? .....

9. State concisely all the grounds on which you now base your allegation(s) that sentence imposed upon you is invalid. Any ground not set forth in this motion will not be hereafter considered.

- (a) Ground alleged — Wire tapping and illegal monitoring of privileged telephone conversations between Petitioner and his attorney and accountant.

State facts (concisely) which support ground (a) hereinabove — See accompanying Petition

- (b) Ground alleged — Deliberate suppression of exculpatory evidence and the knowing use by the Government of perjurious testimony and false records.

State facts (concisely) which support ground (b) hereinabove — See accompanying Petition

- (c) Ground alleged —

State facts (concisely) which support ground (c) hereinabove —

10. Has any ground set forth in Question No. 9 hereinabove been previously presented to this or any other Federal Court by way of motion under Section 2255 of Title 28, U.S.C., or petition for writ of habeas corpus, or any other applications, petitions or motions?

Answer: Rule 33, FRCP

11. If you answered "yes" to Question No. 10 above, list:

- (a) Grounds previously presented  
Petitioner's Rule 33 motion was based upon the post trial discovery of one of the items suppressed; such motion accordingly considered the Gov't's suppression thereof and the falsity of the Gov't's testimony and records with respect thereto.

Nature of proceeding The motion was summarily denied without evidentiary hearing, Government response or determination on the merits.

Name of Court ..... U.S. District Court, Southern District, Miami Division

Date ..... August 7, 1975

(b) Grounds previously presented .....  
Nature of proceeding .....  
Name of Court .....  
Date .....

(c) Grounds previously presented .....  
Nature of proceeding .....  
Name of Court .....  
Date .....

12. Have you previously filed any other motions under Section 2255 of Title 28, U.S.C., petitions for writ of habeas corpus, or any other applications, petitions or motions with respect to this conviction?

Answer: None except the Motion filed under Rule 33 FRCP.

13. If you answered "yes" to Question No. 12 hereinabove, list with respect to each such application, petition or motion:

(a) Name of Court .....  
Location of Court .....  
Nature of application .....

Result .....

Date of result .....

Citations of written opinions or orders entered pursuant thereto .....

(b) Name of Court .....

Location of Court .....

Nature of application .....

Result .....

Date of result .....

Citations of written opinions or orders entered pursuant thereto .....

(c) Name of Court .....

Location of Court .....

Nature of application .....

Result .....

Date of result .....

Citations of written opinions of orders entered pursuant thereto .....



14. If you lack the statutory filing fee (\$15.00) and are seeking leave to proceed in forma pauperis, have you carefully read and completed the sworn affidavit on Page 7? (Any false statement is punishable by law.)

Answer: .....

/s/Louis Vernell  
(Signature of Petitioner)

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN  
DISTRICT OF FLORIDA, MIAMI DIV.

CIVIL ACTION NO.

LOUIS VERNELL,  
Petitioner

vs

UNITED STATES OF AMERICA  
Respondent

**PETITION TO VACATE CONVICTION  
PURSUANT TO 28 U.S.C. 2255**

COMES NOW the Petitioner, LOUIS VERNELL,  
and pursuant to 28 U.S.C. 2255, states as follows:

I.

On July 18, 1974 Petitioner was convicted of the offense of failure to timely file income tax returns in violation of 26 U.S.C. 7203. Petitioner was thereupon sentenced to a term of nine (9) months imprisonment and a fine in the amount of \$5,000.00 (Exhibit A attached).

II.

Petitioner appealed his conviction to the Fifth Circuit Court of Appeals, which affirmed the same pursuant to its Local Rule 21, Vernell v. U.S., 510 Fed 2d 383, Cert. denied December 8, 1975, U.S. 18 CrL4098.



Following issuance of mandate, Petitioner filed a Motion for New Trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure based on newly discovered evidence; this motion was summarily denied without evidentiary hearing or government response. Petitioner appealed this denial to the Fifth Circuit Court of Appeals, which affirmed the same again pursuant to its Local Rule 21, U.S. v. Vernell, Fed 2.

### III.

Petitioner submits that despite the foregoing, his conviction and present confinement are constitutionally infirm and that the same constitute a denial of due process and violation of Petitioner's constitutional rights as accorded to him under the 4th and 5th Amendments to the Constitution of the United States, in that:

- (a) The subject convictions were based upon unauthorized wire tapping and illegal monitoring by the Government of privileged telephone conversations between Petitioner and his attorney and accountant;
- (b) The Government deliberately suppressed documents of an exculpatory nature and knowingly introduced perjurious testimony and false records at Petitioner's trial.

### IV.

It is submitted that the facts showing these constitutional violations and the relevance of Petitioner's claims are reflected in the following:

### A. BACKGROUND OF THE CASE

Prior to trial, the parties stipulated as to all elements of the offense charged, save and except for the sole issue of "wilfullness". Aside from considerations of ill health, loss of records, hospitalizations, pressures, etc. which precipitated his "late" filing, the very essence of Petitioner's attempts to negate the wilfullness charged rested on his ability to demonstrate:

1. That during each of the years as charged in the Information, (1967-1971), the Petitioner had made timely and appropriate applications for extensions of time to file the required returns and that extensions had, in fact, been granted to him by the Internal Revenue Service.

2. That in addition, Petitioner had filed all of the subject tax returns and fully paid all taxes due thereon, almost one year prior to the filing of Information in the cause.

Petitioner was however frustrated in his efforts to demonstrate the foregoing as a result of his prior loss of all records reflecting the filing of the subject extensions — the originals of which were at all times prior and during trial, in the possession of the Government.

### B. ILLEGAL WIRETAPPING AND/OR ELECTRONIC MONITORING OF PETITIONER'S TELEPHONE CONVERSATIONS

In an effort to obtain copies of such valuable exculpatory material, Petitioner made two telephone calls on June 10, 1974 (two days prior to trial) to his attorney

and accountant, wherein Petitioner discussed the matter of his missing extension forms, the relevance thereof, and other defense strategy. Upon information and belief, these highly privileged conversations were the subject of governmental wiretapping and/or other proscribed electronic monitoring. As a direct result of the information obtained from its unlawful eavesdropping, the Government caused a subpoena duces tecum to be issued that same day to Petitioner's accountant (Exhibit B attached).

Prior to Petitioner's telephone conversations, the Government made no previous effort to obtain the documents sought in its subpoena and the record is totally devoid of any similar action taken by the Government in the seven months preceding the trial. Service of such subpoena was effected the next morning (the day prior to trial) by IRS Agent Gay and was accompanied by his instant demand for the immediate production of all of Petitioner's tax records. In compliance therewith, Petitioner's accountant submitted his files of Petitioner for inspection and at Agent Gay's direction, further provided copies of the only two extensions contained in Petitioner's files for the years 1968 and 1969.

Petitioner submits that through an evidentiary hearing he will be able to establish as a demonstrable fact, the unlawful eavesdropping and wiretapping which precipitated these questionable tactics and demands of the Government.

#### C. GOVERNMENT'S SUPPRESSION OF EXCULPATORY EVIDENCE AND ITS USE OF PERJURIOUS TESTIMONY AND FALSE RECORDS DURING TRIAL

At trial the Government conceded the filing of extensions for the same years (1968 and 1969) as were provided to Agent Gay by Petitioner's accountant, but vigorously denied the fact that Petitioner had filed extensions for any of the additional years contained in the Information, i.e., 1967, 1970 and 1971 (Tr. 35, 37). Subsequent events and disclosures now demonstrate that this denial was false and deliberately misleading.

Since trial, Petitioner has obtained documents which virtually destroy the evidence utilized by the Government to establish the purported "wilfulness" of the Petitioner. One such document consists of a certified copy of an official IRS transcript page of Petitioner's tax records which reflects not only the filing, but also the granting of an extension to Petitioner for the year 1971 (Exhibit C attached). This document surfaced for the first time approximately six months after trial in the Exhibit File of the records lodged with the Fifth Circuit Court of Appeals immediately following the prosecutor's use and transmittal thereof.

Significantly, the filing vel non of an extension for that specific year (1971) was especially critical to the trial proceedings and constituted the very crux of the factual dispute between the parties (Tr. 155-159). Analysis of this document indicates that at least two additional documents revealing the same exculpatory information existed and were in the possession of the Government prior and during trial, i.e., the original from which the attached exhibit was prepared and the 1971 extension form itself. Significantly, such exhibit bears the same date of preparation (June 26, 1973) as found on each of the other exhibits that the Government did introduce at trial. Moreover, the Government totally

failed to produce any of the extension forms which had been filed by Petitioner — even for the years 1968 and 1969, which the Government was obliged to acknowledge as having, in fact, been filed.

The suppression of these innumerable and exculpatory documents which were at all times in the possession of the Government, clearly demonstrates the Government's conscious and deliberate efforts to deceive the Court and Jury. Petitioner submits that the significance of these documents could not have escaped the attention of either the prosecutors or the IRS agents who testified directly contra to the information contained therein, notwithstanding the Government's possession of these documents prior and during trial.

**D. MATERIALITY OF THE SUPPRESSED EVIDENCE AND ITS EFFECT UPON THE OUTCOME OF THE CAUSE.**

Aside from the exculpatory effect which such records and extensions would have had on the jury, the Government's deliberate suppression of the same had an even greater impact upon the outcome of the cause through consequent destruction of Petitioner's credibility. The record in this regard reveals that, despite the almost prohibitive weight of "official" records and the testimony of the District Director's "personal representative", the Petitioner testified under penalty of perjury (without supporting documents), that he did, in fact, file extensions for each of the years 1967 thru 1971 (Tr. 148). Ergo, as a result of Government suppression, this irreconcilable conflict could only be resolved by the jury through a determination of

credibility. Indeed, at one point in the trial the Government actually pitted Petitioner's testimony against false and misleading records and the testimony of the Government, viz —

**CROSS-EXAMINATION OF VERNELL, Page 148**

"Q Now, you heard the testimony of Mr. McDaniel?

A Yes, sir.

Q Have you examined Government Exhibit 1 — No. 8?

A Relative to my extension applications?

Q Yes, sir.

A Yes.

Q They don't show that you filed extensions for all those years, do they?

A They are incorrect.

Q You believe they are incorrect.

A I know they are incorrect.

Q What years did you file extensions for, sir?

A I filed extensions for 1967, 1968, 1969, 1970 and 1971."



V.

WHEREFORE, based upon the foregoing facts, and pursuant to 28 USC 2255, the Petitioner is being restrained of his liberty by the United States in violation of his constitutional rights and he therefore prays that the within Petition be granted and an order entered vacating his conviction and sentence.

/s/ Louis Vernell  
**LOUIS VERNELL,**  
in proprii personam

[illegible]

/s/Louis Vernell  
Signature of Affiant

My commission expires:  
1-4-77

**Appendix K**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 76-439 CIV-CF

[FILED JUNE 4, 1976]

LOUIS VERNELL, JR.

Petitioner,

-vs-

UNITED STATES OF AMERICA,  
Respondent.

**ORDER OF DISMISSAL**

Louis Vernell, Jr. has filed a Motion to Vacate Sentence pursuant to Title 28 U.S.C. Section 2255 attacking a nine (9) month sentence of imprisonment imposed by this Court on July 18, 1974. Such sentence was imposed pursuant to a jury verdict of guilty to the offense of failure to timely file income tax returns for the years 1967-1971 in violation of Title 26 U.S.C. Section 7203.

The record reflects that on April 16, 1976, subsequent to the filing of the instant Petition, this court modified and reduced its sentence previously imposed to "time served." Thus, although Petitioner has since been released from custody; this 2255 petition was filed prior thereto.

This court is cognizant that while 2255 relief is not generally available to a person filing a Motion to Vacate after the complained of sentence has completely expired, it is well settled that if one is imprisoned at the time of the original filing of the motion, and released before determination thereof, the cause of action does not become moot. *Carafas v. LaVallee*, 391 U.S. 234 (1967); *Sibron v. New York*, 392 U.S. 40 (1967); *Reed v. United States*, 471 F.2d 721 (5th Cir., 1973). Moreover, in his "Response to Government's Motion to Dismiss", Petitioner has alleged various "disabilities or burdens" flowing from his conviction; demonstrating a further basis to conclude that the petition is not moot. *Carafas v. LaVallee*, supra.

As grounds for relief Petitioner has alleged herein that:

1. The Respondent engaged in unauthorized wiretapping.
2. Suppressed documents of an exculpatory nature and knowingly introduced perjurious testimony and false records at Petitioner's trial.

The gist of Petitioner's contentions is predicated upon the discovery by Petitioner of a certified copy of an official IRS Transcript of Petitioner's tax returns showing that he had not only applied for, but actually was granted an extension for the year 1971; the existence of such extension being crucial only to the issue of "willfulness". Petitioner himself acknowledged that he had not filed his return within the time limits set by any such extension T 154. Nonetheless, Petitioner herein



alleges that the suppression of such evidence greatly affected his credibility at trial as to the issue of whether he actually received extensions for the years in question.

The record reflects however that during the course of Petitioner's direct appeal he successfully moved to supplement the "appendex" with such IRS Transcript and did in fact refer to the existence of such document in his Appellate Reply Brief. In Point III of such brief he argues that the existence of such transcript of account shows that he had received an extension within which to file his 1971 income tax return, and therefore, the testimony of government witness Walter McDaniel in regard thereto was erroneous. Nonetheless, Petitioner's conviction was affirmed by the Fifth Circuit Court of Appeals on February 25, 1975. See 510 F.2d 383.

On Rehearing Petitioner specifically argued that his credibility was severely damaged by such nondisclosure, especially in light of the government's testimony that Petitioner had not sought an extension for the year 1971. Petitioner thereafter presented the gist of his suppression argument in his Petition for a Writ of Certiorari which was denied on December 8, 1975.

On August 7, 1975, Petitioner filed a Motion for New Trial presenting to this court grounds substantially similar to those raised in the instant petition, including the exact same issue of illegal monitoring of telephone conversations. See Page 3 of Motion for New Trial. On August 11, 1975 Petitioner unsuccessfully appealed from the denial of such motion. On this appeal, Petitioner specifically raised the issues of illegal wiretapping, introduction of perjurious testimony and the suppression of the IRS Transcript and its resultant effect upon Petitioner's credibility.

It thus becomes apparent that Petitioner is now attempting to once again raise the same issues which have been presented on other occasions to this court and to the Fifth Circuit Court of Appeals. It is well settled that although traditional notions of Res Judicata do not apply to 2255 proceedings, this court may exercise a sound judicial discretion and decline to re-try issues which have already been presented and ruled upon on other occasions. See *Del Genio v. U.S.*, 352 F.2d 304 (5th Cir., 1965); *Bearden v. U.S.*, 403 F.2d 782 (5th Cir., 1968); *Blackwell v. U.S.*, 429 F.2d 514 (5th Cir., 1970); e.g. *U.S. v. Selegman*, 117 F.Supp. 508 (W.D. Penn. 1953).

Upon careful review of the records of this case, this court must conclude that to permit Petitioner to initiate a collateral attack upon grounds, the substance of which have already been rejected by this as well as the Appellate Court, would merely result in the "purposeless duplication of the review process." *Blackwell*, supra.

For these reasons it is hereby

ORDERED AND ADJUDGED that this Petition be DISMISSED.

DONE AND ORDERED at Miami, Florida, this 28 day of May, 1976.

/s/ Charles B. Fulton  
CHIEF UNITED STATES  
DISTRICT JUDGE

cc: Mr. Louis Vernell  
100 S. E. 2nd Street,  
Miami, Florida

Marsha L. Lyons,  
Assistant U. S. Attorney  
300 Ainsley Building  
Miami, Florida

**Appendix L**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 76-439 CIV-CF

LOUIS VERNELL, JR.

Petitioner,

-vs-

UNITED STATES OF AMERICA,  
Respondent.

**ORDER DENYING MOTION FOR REHEARING  
AND VACATION OF ORDER OF DISMISSAL**

Louis Vernell has filed a Motion for Rehearing and Vacation of An Order of Dismissal entered by this Court on May 28, 1976.

It is hereby

ORDERED AND ADJUDGED that such Motion be DENIED. However, in the interest of justice this Court feels constrained to further clarify those facts which have led it to conclude that the grounds raised in the instant Section 2255 motion to vacate had been previously rejected by this Court as well as the Fifth Circuit Court of Appeal and that redetermination of those

issues would result in the "purposeless duplication of the review process".<sup>1</sup>

The record reflects that the Fifth Circuit Court of Appeals affirmed Petitioner's conviction on February 25, 1975 and at the same time granted Petitioner's motion to supplement the Appendix with an IRS Transcript showing that Petitioner had filed (and allegedly was granted) an extension for filing his 1971 Income Tax Return. However in a reply brief filed on January 13, 1975, Petitioner argued that the existence of such transcript of account showed that he had been granted an extension within which to file his 1971 Income Tax return and that therefore the testimony of Walter McDaniel was erroneous and that there was a variance between the proof and the indictment citing *United States v. Goldstein*, 502 F.2d 526 (3rd Cir., 1974).

On April 10, 1975 Petitioner filed a Petition for Rehearing in which he argued that he was prejudiced by the non-disclosure of such IRS Transcript at trial in that the false and erroneous testimony of McDaniel destroyed Petitioner's credibility. On May 17, 1975 Petitioner filed a "Motion for Remand of Evidentiary Hearing" in which he again called the Fifth Circuit's at-

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<sup>1</sup>The issues raised in such Section 2255 motion to vacate are set forth as follows:

1. The Respondent engaged in unauthorized wire-tapping.
2. The Respondent suppressed documents of an exculpatory nature and knowingly introduced perjurious testimony and false records at Petitioner's trial.

tention to the alleged prejudice occasioned by the suppression of such IRS Transcript and alleged that the government had engaged in illegal monitoring of his telephone conversations. On June 24, 1975 the Fifth Circuit denied Petitioner's Petition for Rehearing giving no indication that it had not considered matters relating to the "Government's suppression, perjurious testimony and falsification of records." The Fifth Circuit however also denied Petitioner's motion that the case be remanded for an evidentiary hearing and declined consideration only as to the grounds raised in that motion (as opposed to Petitioner's motion for rehearing) on the basis that such grounds had been raised for the first time on Appeal and rehearing.

Petitioner thereafter sought certiorari in the United States Supreme Court in which he again argued the issue of variance. Certiorari was denied in December of 1975.

On August 7, 1975, during the pendency of his Petition for certiorari Petitioner filed a motion for new trial in the trial court. Petitioner in effect concedes in the instant motion for rehearing that "matters of government suppression, perjurious testimony of falsification of records" were raised in such motion for new trial which motion contained the following language:

"That accordingly and as a result of newly discovered evidence, the Defendant submits that in contravention of his constitutional rights, the Government failed to disclose and otherwise suppressed evidence of an exculpatory nature; that, further, the Government offered into evidence in the cause, false



and erroneous testimony and records; that as reflected infra, such actions and conduct, on the part of the Government, not only destroyed Defendant's credibility before the jury, but otherwise materially affected the outcome of the cause."

Petitioner also raised the illegal wiretap issue in such motion for new trial which was denied by order dated August 8, 1975 without an evidentiary hearing. In his appellate brief on Direct Appeal from the denial of such motion for new trial Petitioner presented the following allegations to the court's attention:

1. Illegal wiretapping.
2. The introduction of false and perjurious testimony of Walter McDaniel.
3. The failure of the government to correct such perjured testimony.
4. The effect of such suppression on the Petitioner's credibility at trial.

In his reply brief at pages 2-3 Petitioner specifically stated that issues presented in such Appeal were as follows:

"the defendant's charges of suppression of evidence, the introduction of false records and testimony in the cause, and the Government's presumed use of illegal wiretapping".

The Fifth Circuit Court of Appeals affirmed the denial of such motion on January 21, 1976.

This Court thus feels constrained to reaffirm its position that the grounds raised in the subject 2255 Petition have previously been decided by both this Court and the Fifth Circuit Court of Appeals in Petitioner's Petition for Rehearing; Motion for New Trial and the Direct Appeal from the denial thereof. See *Laughlin v. United States*, 474 F.2d 444 (D.C. Cir., 1972), *Blackwell v. United States*, 429 F.2d 514 (5th Cir., 1970); *Del Genio v. United States*, 352 F.2d 304 (5th Cir., 1965); *United States v. Selegman*, 117 F.Supp. 508 (W. Penn., 1953).

DONE AND ORDERED at Miami, Florida, this 7 day of September, 1976.

/s/ Charles B. Fulton  
CHIEF UNITED STATES  
DISTRICT JUDGE

cc: Mr. Louis Vernell, Jr.  
United States Attorney

**Appendix M**

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 76-439-CIV-CF

LOUIS VERNELL, JR.,  
Petitioner

v

UNITED STATES OF AMERICA  
Respondent

**NOTICE OF APPEAL**

TAKE NOTICE that Louis Vernell, Jr., Petitioner herein, takes and enters his appeal to the United States Court of Appeals, 5th Circuit, to review that certain judgment and/or order of dismissal as entered in the within cause on May 28th, 1976 and filed June 4th, 1976 and to further and additionally review that certain judgment and/or denial of Motion for Rehearing and Vacation of Order of Dismissal as entered September 7th, 1976 and filed on September 28, 1976.

All parties to this cause are called upon to take notice of the entry of this Appeal.

I HEREBY CERTIFY that a true copy of the above was mailed this 8th day of October, 1976 to:

United States Attorney  
Ainsley Building  
Miami, Florida

Louis Vernell, Jr.,  
in Proper Person  
100 S.E. 2nd Street  
Miami, Florida 33131



**Appendix N**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

NO. 75-3128

UNITED STATES OF AMERICA,  
Plaintiff/Appellee,

vs.

LOUIS VERNELL, JR.,  
Defendant/Appellant.

**AFFIDAVIT**

STATE OF FLORIDA )  
                              ) SS  
COUNTY OF DADE )

E. DAVID ROSEN, being duly sworn, upon oath,  
deposes and says as follows:

1. That he was attorney of record for the defendant/appellant herein prior and during trial proceedings in the United States District Court for the Southern District of Florida, Miami Division.

2. That Affiant has been presented a copy of the attached Exhibit which reflects the filing and granting

of an application made by the defendant/appellant for an extension of time to file his income tax return for the taxable year 1971.

3. That Affiant is confident that he had not received and had not seen the attached transcript of account reflecting the granting of an extension of time to the defendant/appellant to file his 1971 income tax return until presented to him on this date.

4. That had the attached document been available, the use of it would have been reflected in the cross-examination of the government's first witness, WALTER McDANIEL, and the direct examination of the defendant in support of his position that an extension had been applied for regarding that year.

5. That although the issue of whether or not the defendant had filed his extension for the year 1971 was contested during trial proceedings, the government took the position that none had been filed; that except for his sworn testimony, the defendant was unable to establish his filing of such extension and no records to support such fact were available or otherwise made available to the defendant.

**FURTHER AFFIANT SAYETH NOT.**

(stamp) E. DAVID ROSEN  
E. DAVID ROSEN

**SWORN TO AND SUBSCRIBED BEFORE ME**  
this 15th day of August, 1975.

/s/ Sandra S. Landfield  
NOTARY PUBLIC  
STATE OF FLORIDA AT LARGE

MY COMMISSION EXPIRES: 3/29/78